

SENATE BILL 163

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E3

2004 Regular Session
(4lr1073)

ENROLLED BILL
-- Judicial Proceedings/Judiciary --

Introduced by **Senators Kelley, Britt, Della, Exum, Frosh, Gladden, Grosfeld,
Lawlah, McFadden, and ~~Teitelbaum~~ Teitelbaum, Forehand, and Green**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Juvenile Law - Waiver of Counsel**

3 FOR the purpose of prohibiting a child from waiving the right to the assistance of
4 counsel in certain proceedings except under certain circumstances; prohibiting a
5 parent, guardian, or custodian of a child from waiving the child's right to the
6 assistance of counsel; prohibiting the juvenile court from accepting a waiver of
7 the child's right to the assistance of counsel except under certain circumstances;
8 requiring the court to consider certain factors in determining whether a waiver
9 is knowing and voluntary; requiring the court to continue and the clerk to
10 reschedule a waiver or adjudicatory hearing under certain circumstances;
11 requiring the clerk to issue a certain notice within a certain time period;
12 requiring the Office of the Public Defender to enter an appearance for the child
13 under certain circumstances; requiring the Office of the Public Defender, after
14 entry of its appearance, to verify eligibility for continued Public Defender
15 representation in a certain manner; establishing that the continuance of a waiver
16 or adjudicatory hearing may not be a basis for detaining the child; and generally

1 relating to the right to the assistance of counsel in juvenile proceedings.

2 BY repealing and reenacting, with amendments,

3 Article - Courts and Judicial Proceedings

4 Section 3-8A-20

5 Annotated Code of Maryland

6 (2002 Replacement Volume and 2003 Supplement)

7 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

8 MARYLAND, That the Laws of Maryland read as follows:

9 **Article - Courts and Judicial Proceedings**

10 3-8A-20.

11 (a) Except as provided in subsection [(c)] (D) of this section, a party is entitled
12 to the assistance of counsel at every stage of any proceeding under this subtitle.

13 (b) (1) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, A
14 CHILD MAY NOT WAIVE THE RIGHT TO THE ASSISTANCE OF COUNSEL IN A
15 PROCEEDING UNDER THIS SUBTITLE.

16 (2) A PARENT, GUARDIAN, OR CUSTODIAN OF A CHILD MAY NOT WAIVE
17 THE CHILD'S RIGHT TO THE ASSISTANCE OF COUNSEL.

18 (3) AFTER A PETITION OR CITATION HAS BEEN FILED WITH THE COURT
19 UNDER THIS SUBTITLE, IF A CHILD INDICATES A DESIRE TO WAIVE THE RIGHT TO
20 THE ASSISTANCE OF COUNSEL, THE COURT MAY NOT ACCEPT THE WAIVER UNLESS:

21 (I) THE CHILD IS IN THE PRESENCE OF COUNSEL AND HAS
22 CONSULTED WITH COUNSEL; AND

23 (II) THE COURT DETERMINES THAT THE WAIVER IS KNOWING AND
24 VOLUNTARY.

25 (4) IN DETERMINING WHETHER THE WAIVER IS KNOWING AND
26 VOLUNTARY, THE COURT SHALL CONSIDER, AFTER APPROPRIATE QUESTIONING IN
27 OPEN COURT AND ON THE RECORD, WHETHER THE CHILD FULLY COMPREHENDS:

28 (I) THE NATURE OF THE ALLEGATIONS AND THE PROCEEDINGS,
29 AND THE RANGE OF ALLOWABLE DISPOSITIONS;

30 (II) THAT COUNSEL MAY BE OF ASSISTANCE IN DETERMINING AND
31 PRESENTING ANY DEFENSES TO THE ALLEGATIONS OF THE PETITION, OR OTHER
32 MITIGATING CIRCUMSTANCES;

33 (III) THAT THE RIGHT TO THE ASSISTANCE OF COUNSEL IN A
34 DELINQUENCY CASE, OR A CHILD IN NEED OF SUPERVISION CASE, INCLUDES THE

1 RIGHT TO THE PROMPT ASSIGNMENT OF AN ATTORNEY, WITHOUT CHARGE TO THE
2 CHILD IF THE CHILD IS FINANCIALLY UNABLE TO OBTAIN PRIVATE COUNSEL;

3 (IV) THAT EVEN IF THE CHILD INTENDS NOT TO CONTEST THE
4 CHARGE OR PROCEEDING, COUNSEL MAY BE OF SUBSTANTIAL ASSISTANCE IN
5 DEVELOPING AND PRESENTING MATERIAL THAT COULD AFFECT THE DISPOSITION;
6 AND

7 (V) THAT AMONG THE CHILD'S RIGHTS AT ANY HEARING ARE THE
8 RIGHT TO CALL WITNESSES ON THE CHILD'S BEHALF, THE RIGHT TO CONFRONT AND
9 CROSS-EXAMINE WITNESSES, THE RIGHT TO OBTAIN WITNESSES BY COMPULSORY
10 PROCESS, AND THE RIGHT TO REQUIRE PROOF OF ANY CHARGES.

11 (C) Compensation for the services of an attorney appointed to represent a child
12 in an action under this subtitle may be assessed by the court against any party or
13 against a parent of the child.

14 [(c)] (D) (1) A party is not entitled to the assistance of counsel at a peace
15 order proceeding.

16 (2) Paragraph (1) of this subsection does not affect the entitlement of a
17 respondent to the assistance of counsel in a contempt proceeding as provided by law.

18 (E) (1) UNLESS THE CASE IS DISMISSED, IF A CHILD APPEARS IN COURT
19 WITHOUT COUNSEL FOR A WAIVER HEARING UNDER § 3-8A-06 OF THIS SUBTITLE, OR
20 AN ADJUDICATORY HEARING UNDER § 3-8A-18 OF THIS SUBTITLE, AND THE CHILD
21 HAS NOT PREVIOUSLY WAIVED THE RIGHT TO THE ASSISTANCE OF COUNSEL IN
22 ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION, THE COURT SHALL
23 CONTINUE AND THE CLERK SHALL RESCHEDULE THE WAIVER OR ADJUDICATORY
24 HEARING.

25 (2) THE CLERK SHALL ISSUE A NOTICE OF THE DATE, TIME, AND
26 LOCATION OF THE HEARING AT LEAST 10 DAYS PRIOR TO THE DATE OF THE
27 HEARING.

28 (3) (I) THE OFFICE OF THE PUBLIC DEFENDER SHALL ENTER AN
29 APPEARANCE FOR THE CHILD.

30 (II) AFTER ENTRY OF ITS APPEARANCE, THE OFFICE OF THE
31 PUBLIC DEFENDER SHALL VERIFY ELIGIBILITY FOR CONTINUED PUBLIC DEFENDER
32 REPRESENTATION IN ACCORDANCE WITH ARTICLE 27A, § 7 OF THE CODE AND THE
33 MARYLAND RULES.

34 (4) THE CONTINUANCE OF A WAIVER OR ADJUDICATORY HEARING
35 UNDER THIS SUBSECTION MAY NOT BE A BASIS FOR DETAINING THE CHILD UNDER
36 § 3-8A-15 OF THIS SUBTITLE.

37 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
38 October 1, 2004.

